

AMENDED IN ASSEMBLY APRIL 18, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1508

**Introduced by Committee on Agriculture (Matthews (Chair),
Maze (Vice Chair), Blakeslee, Cogdill, Parra, Salinas, and
Vargas)**

February 22, 2005

An act to amend Sections 52254, ~~52254.4, 52254.5, 52257.6, 52257.8, 52260, 52311, 52331, 52332, 52351, 52354, 52361, 52391, 52401, 52451, 52452, 52453, 52455, 52481, 52482, 52483, 52484, 52487, and 52511~~ of the Food and Agricultural Code, relating to agriculture.

LEGISLATIVE COUNSEL'S DIGEST

AB 1508, as amended, Committee on Agriculture. Seed.

Existing law, the California Seed Law, generally regulates seed sold in California to ensure that seed purchased by the consumer-buyer is properly identified and of the quality represented on the tag or label. Existing law defines agricultural seed as not including any variety that is generally known and sold as vegetable seed, for these purposes. *Existing law provides that vegetable seed sold in a container one-half pound or less that is for sale or sold for sowing purposes shall bear upon it the year in which it is intended for planting.*

~~This bill would include vegetable seed in the definition of agricultural seed and remove these provisions and would instead provide that any vegetable seed sold in a container one-half pound or less shall bear upon it at the time of retail sale for nonfarm use the viability assurance statement "Packed for the (year) season." This bill would make numerous other nonsubstantive, conforming changes.~~

Because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 52254 of the Food and Agricultural
2 Code is amended to read:

3 52254. "Agricultural seed" means the seed of any
4 domesticated grass or cereal, and of any legume or other plant
5 which is grown as turf, cover crop, forage crop, fiber crop, *or*
6 field crop, ~~or vegetable seed~~ and mixtures of such seeds. It does
7 not, however, include any variety that is generally known and
8 sold as flower seed *or vegetable seed*.

9 ~~SEC. 2. Section 52254.4 of the Food and Agricultural Code is~~
10 ~~amended to read:~~

11 ~~52254.4. "Certification" means to certify as to the variety,~~
12 ~~purity, quality, type, strain, or other genetic character of~~
13 ~~agricultural seed.~~

14 ~~SEC. 3. Section 52254.5 of the Food and Agricultural Code is~~
15 ~~amended to read:~~

16 ~~52254.5. "Labeler" means any person whose name and~~
17 ~~address appears on the label pertaining to or attached to a lot or~~
18 ~~container of agricultural seed for sale and distribution within the~~
19 ~~state.~~

20 ~~SEC. 4. Section 52257.6 of the Food and Agricultural Code is~~
21 ~~amended to read:~~

22 ~~52257.6. "Process" means any modification of the form or~~
23 ~~nature of agricultural seed, or any treatment of the seed, which~~
24 ~~renders it inviable.~~

25 ~~SEC. 5. Section 52257.8 of the Food and Agricultural Code is~~
26 ~~amended to read:~~

1 ~~52257.8. “Research” means any research related to the~~
2 ~~variety, purity, quality, type, strain, or other genetic and~~
3 ~~physiological characteristics of agricultural seed or the~~
4 ~~production thereof.~~

5 ~~SEC. 6.~~

6 ~~SEC. 2.~~ Section 52260 of the Food and Agricultural Code is
7 amended to read:

8 52260. “Weed seed” means any noxious weed seed, and any
9 seed that is not included in the definitions of agricultural seed, if
10 it occurs incidentally in agricultural seed.

11 ~~SEC. 7.~~ Section 52311 of the Food and Agricultural Code is
12 amended to read:

13 ~~52311. A person is not subject to the penalties which are~~
14 ~~prescribed by this chapter in any of the following cases:~~

15 ~~(a) For selling in this state any agricultural seed which is~~
16 ~~incorrectly labeled or represented as to kind, variety, or type,~~
17 ~~which seed cannot be identified by examination of it, unless he~~
18 ~~has failed to obtain an invoice or grower’s declaration which~~
19 ~~gives the commonly accepted name of the kind, kind and variety,~~
20 ~~or kind and type, and to take such other precautions as may be~~
21 ~~necessary to insure the identity to be that which is stated.~~

22 ~~(b) As to any matter which is required by Article 8~~
23 ~~(commencing with Section 52451) of this chapter, for selling~~
24 ~~such seed in original unopened sealed packages which are fully~~
25 ~~labeled by another dealer, unless he has failed to have such seed~~
26 ~~retested and relabeled as to the percentage of germination within~~
27 ~~the period which is prescribed by Section 52481, or unless he has~~
28 ~~failed to correct the label after notice that such label has been~~
29 ~~found to be incorrect.~~

30 ~~(c) For shipping, delivering, transporting, or selling within this~~
31 ~~state any agricultural seed which has a false labeling as to~~
32 ~~percentage of germination or hard seeds, unless he has first been~~
33 ~~given an opportunity by the director to be heard. This exemption~~
34 ~~does not, however, relieve any person from the obligation, upon~~
35 ~~order of an enforcement official, to stop further sale of any seed~~
36 ~~which is found to be incorrectly labeled as to germination, nor~~
37 ~~does it exempt such seed from seizure pursuant to this chapter.~~

38 ~~SEC. 8.~~ Section 52331 of the Food and Agricultural Code is
39 amended to read:

~~52331. The director, by regulations, shall do all of the following:~~

~~(a) Adopt germination standards for vegetable seed.~~

~~(b) Adopt tolerances to be applied in all enforcement procedure required by this chapter.~~

~~(c) Prescribe methods of procedure in the examination of lots of any agricultural seed, and in securing samples of such lots.~~

~~(d) Establish a reasonable schedule of fees for tests, examinations, and services except those which are required for quarantine or other purposes, not directly related to the enforcement of this chapter. The schedule shall be based upon the approximate cost of the service rendered. The director may, however, provide for the examination of seeds for identification purposes without charge.~~

~~(e) Adopt such other regulations as will assist in carrying out the purposes of this chapter.~~

~~Every standard or tolerance which is adopted pursuant to this chapter shall be as nearly as practicable to that which is established under the Federal Seed Act (7 U.S.C., Sec. 1551, et seq.).~~

~~SEC. 9. Section 52332 of the Food and Agricultural Code is amended to read:~~

~~52332. The secretary, by regulation, may adopt all of the following:~~

~~(a) A list of the plants and crops that the secretary finds are or may be grown in this state from agricultural seed.~~

~~(b) A list of the plants and crops that the secretary finds are detrimental to agriculture if they occur incidentally in other crops, and which, therefore, are classed as weed seed except if sold alone or as a specific constituent of a definite seed mixture.~~

~~(c) A list of noxious weed seed that the secretary finds are prohibited noxious weed seed, as defined in this chapter.~~

~~(d) A list of those noxious weed seed that are not classified as prohibited noxious weed seed, and which, therefore, are classed by this chapter as restricted noxious weed seed.~~

~~(e) A list of substances that are likely to be used for treating grain or other crop seed, which the secretary finds and determines are toxic to human beings or animals if so used, together with an appropriate warning or caution statement for each such substance.~~

1 ~~(f) Establish methods and procedures, upon the~~
2 ~~recommendation of the board, for the conciliation, mediation, or~~
3 ~~arbitration of disputes between labelers and any persons~~
4 ~~concerning conformance with label statements, advertisements,~~
5 ~~or other disputes regarding the quality or performance of seed.~~
6 ~~The methods and procedures shall be a mandatory prerequisite to~~
7 ~~pursuing other dispute resolution mechanisms, including, but not~~
8 ~~limited to, litigation. However, if conciliation, mediation, or~~
9 ~~arbitration proceedings are commenced under this section to~~
10 ~~resolve a controversy, the statute of limitations that applies to a~~
11 ~~civil action concerning that controversy is tolled upon~~
12 ~~commencement of conciliation, mediation, or arbitration~~
13 ~~proceedings, and until 30 days after the completion of those~~
14 ~~proceedings. As used in this subdivision, "completion of those~~
15 ~~proceedings" means the filing of a statement of agreement or~~
16 ~~nonagreement by the conciliator or mediator, or the rendering of~~
17 ~~a decision by an arbitrator or arbitration committee.~~

18 ~~Conciliation, mediation, or arbitration shall not affect any~~
19 ~~enforcement action by the secretary pursuant to this chapter.~~
20 ~~Regulations adopted by the secretary for the mandatory~~
21 ~~conciliation, mediation, or arbitration of disputes shall require~~
22 ~~that adequate notice be provided on the seed label notifying any~~
23 ~~buyer of the requirement to submit a dispute to mandatory~~
24 ~~conciliation, mediation, or arbitration as a prerequisite to other~~
25 ~~dispute resolution mechanisms, including litigation.~~

26 ~~(g) Establish additional labeling requirements for coated,~~
27 ~~pelleted, encapsulated, mat, tape, or any other germination~~
28 ~~medium or device used on agricultural or vegetable seed in order~~
29 ~~that the purchaser or consumer will be informed as to the actual~~
30 ~~amount of seed purchased.~~

31 ~~SEC. 10.~~

32 ~~SEC. 3.~~ Section 52351 of the Food and Agricultural Code is
33 ~~amended to read:~~

34 52351. Every labeler of agricultural *or vegetable* seed offered
35 for sale or sold in this state, or any person who receives or
36 possesses for sale or sells in this state any such seed which is not
37 grown in this state, shall annually register with the director to
38 obtain authorization to sell agricultural *or vegetable* seed before
39 he engages in this activity, except any of the following:

1 (a) An individual grower that conditions ~~agricultural~~ *such* seed
2 exclusively for his own planting use.

3 (b) A person using agricultural *or vegetable* seed, *or both*
4 *agricultural and vegetable seed*, only for purposes of planting
5 seed increase.

6 (c) Any person licensed to sell nursery stock pursuant to
7 Chapter 1 (commencing with Section 6701) of Part 3 of Division
8 4, except when he also engages in activities as defined under
9 Section 52257.5.

10 ~~SEC. 4.~~

11 *SEC. 4.* Section 52354 of the Food and Agricultural Code is
12 amended to read:

13 52354. Each person required to be registered pursuant to
14 Section 52351 shall pay an assessment annually to the director in
15 an amount not to exceed forty cents (\$0.40) per one hundred
16 dollars (\$100) gross annual dollar volume sales of agricultural *or*
17 *vegetable* seed, *or both*, in this state for the preceding fiscal year
18 defined in Section 52352, except in the following cases:

19 (a) No assessment shall be paid by any labeler or any other
20 person for any agricultural *or vegetable* seed for which the
21 assessment has been previously paid by another labeler or
22 person, except when the identity of the lot has been changed.

23 (b) No assessment shall be paid on that portion of a person's
24 sales of agricultural *or vegetable* seed, *or both*, that is sold in
25 containers of four ounces or less net weight of seed.

26 (c) No assessment shall be paid on agricultural *or vegetable*
27 seed, *or both*, sold and shipped out of this state.

28 ~~SEC. 12.~~

29 *SEC. 5.* Section 52361 of the Food and Agricultural Code is
30 amended to read:

31 52361. The director, each commissioner, and any qualified
32 representative of the commissioner, shall sample and inspect any
33 agricultural *or vegetable* seed which is subject to this chapter at
34 the time and place and to the extent as he may deem necessary to
35 determine whether the agricultural *or vegetable* seed is in
36 compliance with the provisions of this chapter, and notify
37 promptly the person that is in possession or control of the seed of
38 any violation.

~~SEC. 13.~~

SEC. 6. Section 52391 of the Food and Agricultural Code is amended to read:

52391. The director or the commissioner and any qualified representative of the commissioner may issue and enforce a written or printed “stop-sale” order to the owner or custodian of any lot of agricultural *or vegetable* seed that he finds is in violation of any provision of this chapter, that shall prohibit further sale of the seed until the officer has evidence that the law has been complied with. Upon compliance, the order shall be removed.

~~SEC. 14. Section 52401 of the Food and Agricultural Code is amended to read:~~

~~52401. The secretary shall, by regulation, establish a list of seed-certifying agencies that the secretary finds qualified to certify as to the variety, purity, quality, type, strain, or other genetic character of agricultural seed. The secretary shall consult with the director of the University of California Agricultural Experiment Station before approving the qualifications of any seed-certifying agency.~~

~~SEC. 15.~~

SEC. 7. Section 52451 of the Food and Agricultural Code is amended to read:

52451. This article does not apply to any of the following:

- (a) Seed or grain that is not intended for sowing purposes.
- (b) Seed that is in storage in, or consigned to, a seed cleaning or conditioning establishment for cleaning or conditioning.
- (c) Seed or grain that is transported without transfer of title for sowing on land that is owned by the person by whom the seed or grain was produced.
- (d) Seed that is weighed and packaged in the presence of the purchaser from a bulk container, if that container is properly and conspicuously labeled as provided by this chapter.
- (e) Seed or grain that is transported from one warehouse to another without transfer of title or in storage in a warehouse, if each container is plainly marked or identified with a lot number or other lot identification and the label information that is required by this article is available at the request of an enforcing officer.

1 ~~SEC. 16. Section 52452 of the Food and Agricultural Code is~~
2 ~~amended to read:~~

3 ~~52452. Except as otherwise provided in Section 52454, each~~
4 ~~container of agricultural seed which is for sale or sold within this~~
5 ~~state for sowing purposes, unless the sale is an occasional sale of~~
6 ~~seed grain by the producer of the seed grain to his neighbor for~~
7 ~~use by the purchaser within the county of production, shall bear~~
8 ~~upon it or have attached to it in a conspicuous place a plainly~~
9 ~~written or printed label or tag in the English language, which~~
10 ~~gives all of the following information:~~

11 ~~(a) Commonly accepted name of the kind, kind and variety, or~~
12 ~~kind and type of each agricultural seed component in excess of 5~~
13 ~~percent of the whole, and the percentage by weight of each. If the~~
14 ~~aggregate of agricultural seed components, each present in an~~
15 ~~amount not exceeding 5 percent of the whole, exceeds 10 percent~~
16 ~~of the whole, each component in excess of 1 percent of the whole~~
17 ~~shall be named together with the percentage by weight of each. If~~
18 ~~more than one component is required to be named, the names of~~
19 ~~all components shall be shown in letters of the same type and~~
20 ~~size.~~

21 ~~(b) Lot number or other lot identification.~~

22 ~~(c) Percentage by weight of all weed seeds.~~

23 ~~(d) The name and approximate number of each kind of~~
24 ~~restricted noxious weed seed per pound.~~

25 ~~(e) Percentage by weight of any agricultural seed except that~~
26 ~~which is required to be named on the label.~~

27 ~~(f) Percentage by weight of inert matter. If a percentage by~~
28 ~~weight is required to be shown by any provision of this section~~
29 ~~such percentage shall be exclusive of any substance which is~~
30 ~~added to the seed as a coating and shown on the label as such.~~

31 ~~(g) For each agricultural seed, in excess of 5 percent of the~~
32 ~~whole, stated in accordance with subdivision (a) of this section,~~
33 ~~the percentage of germination, exclusive of hard seed; the~~
34 ~~percentage of hard seed, if present; and the calendar month and~~
35 ~~year the test was completed to determine such percentages.~~
36 ~~Following the statement of such percentages, the additional~~
37 ~~statement "total germination and hard seed" may be stated as~~
38 ~~such, if desired.~~

39 ~~(h) Name and address of the person that labeled the seed, or of~~
40 ~~the person that sells the seed within this state.~~

~~All determinations of noxious weed seeds are subject to tolerances and methods of determination which are prescribed in the regulations which are adopted pursuant to this chapter.~~

~~(i) This section shall not apply to vegetable seed.~~

SEC. 8. Section 52453 of the Food and Agricultural Code is amended to read:

52453. Except as otherwise provided in Section 52454, each container of vegetable seed that is for sale or sold within this state for sowing purposes shall bear upon it, or have attached to it, in a conspicuous place, a plainly written or printed label or tag in the English language, which gives all of the following information:

(a) Name of kind and variety of seed.

(b) For any seed that germinates less than the standard last established by the director under this chapter, the percentage of germination, exclusive of hard seed; the percentage of hard seed, if present; the calendar month and year the test was completed to determine those percentages; and the words "Below Standard" in not less than eight-point type.

(c) Name and address of the person that labeled the seed, or of the person that sells the seed within this state.

(d) In addition to the information required in subdivisions (a), (b), and (c), on each container of more than one-half pound (227 grams), the label shall include both the lot number or other lot identification and the calendar month and year the germination test was completed.

~~(e) In addition to the information required in subdivisions (a), (b), and (c), on each container of one-half pound (227 grams) or less, the labeling shall include the statement "Packed for the (number of the year) season." The year shall be the year intended for planting.~~

SEC. 9. Section 52455 of the Food and Agricultural Code is amended to read:

52455. In addition to the labeling requirements of this article, all seed at the time of sale by a retail merchant for nonfarm usage, shall conspicuously bear upon the labeling of the seed a viability assurance statement.

(a) The statement shall be "SELL BY (month) (year)", or "USE BEFORE (month) (year)". The month and year in the

1 statement shall not exceed the 15-month retail time period
2 allowed by subdivision (b) of Section 52481.

3 (b) The statement shall be conspicuous and in capital letters of
4 the same size of type as other printed material on the labeling and
5 contiguous to the germination date.

6 (c) The statement shall be affixed at the time of labeling for
7 those containers destined for retail sales.

8 (d) *For vegetable seed sold in containers of one-half pound*
9 *(227 grams) or less, the viability assurance statement may read*
10 *“Packed for (year) season” as an alternative to the “SELL BY*
11 *(month) (year)” statements referenced in subdivision (a) of*
12 *Section 52455.*

13 ~~SEC. 17.~~

14 *SEC. 10.* Section 52481 of the Food and Agricultural Code is
15 amended to read:

16 52481. Except as otherwise provided in this section or in
17 Section 52486, it is unlawful for any person to ship, deliver,
18 transport, or sell any agricultural *or vegetable* seed within this
19 state, other than the seed that is described in Section 52451,
20 unless the test to determine the percentage of germination that is
21 required by Article 8 (commencing with Section 52451) has been
22 completed within the following period, exclusive of the calendar
23 month in which the test is completed, immediately prior to
24 shipment, delivery, transportation, or sale:

25 (a) In the case of any agricultural *or vegetable* seed that is
26 shipped, delivered, transported, or sold to a dealer for resale,
27 eight months.

28 (b) In the case of any agricultural *or vegetable* seed that is sold
29 at retail, 15 months.

30 (c) In the case of any agricultural *or vegetable* seed that is
31 packaged under conditions that the director finds and determines
32 will prolong the viability of the seed, the director may designate,
33 in regulations that are adopted pursuant to this chapter, a longer
34 period than otherwise specified in this section, and may require
35 any additional labeling that may be necessary to maintain
36 identification of seed that is packaged under these conditions.

37 (d) Seed labeled under Section 52455 is not subject to
38 subdivision (b) upon expiration of the viability assurance
39 statement. This exemption does not limit the right of the

1 enforcing officer to enforce other applicable sections of this
2 chapter.

3 ~~SEC. 18.~~

4 *SEC. 11.* Section 52482 of the Food and Agricultural Code is
5 amended to read:

6 52482. Except as otherwise provided in Section 52486, it is
7 unlawful for any person to ship, deliver, transport, or sell any
8 agricultural *or vegetable* seed within this state that is within any
9 of the following classes:

10 (a) Is not labeled in accordance with the provisions of this
11 chapter. This subdivision does not, however, apply to any seed
12 that is described in Section 52451.

13 (b) Contains prohibited noxious weed seed, subject to
14 tolerances and methods of determination prescribed in the
15 regulations that are adopted pursuant to this chapter. This
16 subdivision does not, however, apply to any of the seed that is
17 described in subdivisions (a) or (b) of Section 52451.

18 (c) Has a false or misleading labeling, or pertaining to which
19 there has been a false or misleading advertisement.

20 (d) Is represented to be certified seed or registered seed, unless
21 it has been produced and labeled in accordance with the
22 procedures and in compliance with the rules and regulations of a
23 seed-certifying agency which is officially recognized under the
24 provisions of this chapter, if produced in this state, or under the
25 provisions of the Federal Seed Act (7 U.S.C., Sec. 1551, et seq.),
26 as enacted, and rules and regulations that are adopted pursuant to
27 that act, if produced outside of this state.

28 (e) Contains more than 1 1/2 percent by weight of all weed
29 seeds. This subdivision does not, however, apply to any seed
30 which is described in subdivision (a),(b), or (c) of Section 52451.

31 (f) To sell, by variety name, seed not certified by an official
32 seed certifying agency when it is a variety for which a certificate
33 of plant variety protection under the United States Plant Variety
34 Protection Act (84 Stats. 1542; 7 U.S.C. Sec. 2321, et seq.)
35 specifies sale only as a class of certified seed, except that seed
36 from a certified lot may be labeled as to variety name when used
37 in a mixture by, or with the written approval of the owner of the
38 variety.

1 ~~SEC. 19.~~

2 ~~SEC. 12.~~ Section 52483 of the Food and Agricultural Code is
3 amended to read:

4 52483. It is unlawful for any person to do any of the
5 following:

6 (a) Detach, alter, deface, or destroy any label, warning tag, or
7 notice which is provided for in this chapter or in the regulations
8 that are adopted pursuant to it, or alter or substitute seed, in a
9 manner that may defeat the purposes of this chapter.

10 (b) Disseminate any false or misleading advertisement
11 concerning agricultural *or vegetable* seed in any manner or by
12 any means.

13 (c) Hinder or obstruct in any way any authorized person in the
14 performance of his duties under this chapter.

15 (d) Fail to comply with a “stop-sale” order.

16 ~~SEC. 20.~~

17 ~~SEC. 13.~~ Section 52484 of the Food and Agricultural Code is
18 amended to read:

19 52484. (a) Except as otherwise provided in Section 52486, it
20 is unlawful for any person to ship, deliver, transport, or sell
21 agricultural *or vegetable* seed that is treated after harvest with
22 any substance that is likely to be poisonous or toxic to human
23 beings or animals unless there is conspicuously shown on the
24 analysis tag or label, on a separate tag or label attached to each
25 container, or upon each container all of the following
26 information:

27 (1) “TREATED SEED” and the signal word for the category
28 of treatment material all in capital letters.

29 (2) The chemical or generic name of the treatment material.

30 (3) An appropriately worded statement as to the hazards to
31 humans and animals.

32 (4) An appropriately worded statement of practical treatment,
33 if present.

34 (b) This information shall be derived from the technical
35 chemical label of the substance applied to the seed.

36 (c) When more than one substance is applied, each substance
37 shall be noted on the label, and the seed shall be labeled for the
38 substance with the higher level of toxicity.

~~SEC. 21.~~

SEC. 14. Section 52487 of the Food and Agricultural Code is amended to read:

52487. A violation of this chapter for having shipped, delivered, transported, or sold agricultural or vegetable seed that has false or misleading labeling shall be construed to have been committed at the time of discovery of such violation, and a complaint charging such violation shall be filed within one year from the time of such discovery. No complaint which charges such a violation shall, however, be filed after two years from the date of sale.

~~SEC. 22.~~

SEC. 15. Section 52511 of the Food and Agricultural Code is amended to read:

52511. Any lot of agricultural *or vegetable* seed that does not comply with this chapter is a public nuisance and is subject to seizure on complaint of the director or the commissioner or any enforcing officer of this chapter to a court of competent jurisdiction in the area in which the seed is located.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.